

CCRB INVESTIGATIVE RECOMMENDATION

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|---|---|---------------------------|--|---|---------------------------------|
| Investigator: Frank Montgoris | Team: Squad #12 | CCRB Case #: 201801611 | <input type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Wednesday, 02/07/2018 4:00 PM | Location of Incident: Intersection of Thieriot Avenue and Story Avenue | Precinct: 43 | 18 Mo. SOL 8/7/2019 | EO SOL 8/7/2019 | |
| Date/Time CV Reported Thu, 02/15/2018 7:20 PM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Mon, 02/26/2018 11:11 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
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| Subject Officer(s) | Shield | TaxID | Command |
|--------------------------|--------|--------|---------|
| 1. POM Michael Heinz | 09897 | 953959 | PSA 8 |
| 2. SGT Wilbert Rodriguez | 04389 | 919641 | PSA 8 |
| 3. POM Jimmie Moore | 25780 | 925771 | PSA 8 |
| 4. An officer | | | PSA 8 |

| Officer(s) | Allegation | Investigator Recommendation |
|-------------------------|---|-----------------------------|
| A.SGT Wilbert Rodriguez | Abuse: Sergeant Wilbert Rodriguez questioned § 87(2)(b) | |
| B.SGT Wilbert Rodriguez | Abuse: Sergeant Wilbert Rodriguez stopped § 87(2)(b) | |
| C.SGT Wilbert Rodriguez | Abuse: Sergeant Wilbert Rodriguez stopped § 87(2)(b) | |
| D.SGT Wilbert Rodriguez | Abuse: Sergeant Wilbert Rodriguez stopped § 87(2)(b) | |
| E.SGT Wilbert Rodriguez | Abuse: Sergeant Wilbert Rodriguez frisked § 87(2)(b) | |
| F.SGT Wilbert Rodriguez | Abuse: Sergeant Wilbert Rodriguez searched § 87(2)(b) | |
| G.SGT Wilbert Rodriguez | Abuse: Sergeant Wilbert Rodriguez frisked § 87(2)(b) | |
| H.SGT Wilbert Rodriguez | Abuse: Sergeant Wilbert Rodriguez searched § 87(2)(b) | |
| I. An officer | Abuse: An officer searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. | |
| J.POM Michael Heinz | Abuse: Police Officer Michael Heinz interfered with § 87(2)(b)'s use of a recording device. | |
| K.POM Michael Heinz | Abuse: Police Officer Michael Heinz damaged § 87(2)(b)'s property. | |
| L.POM Michael Heinz | Discourtesy: Police Officer Michael Heinz acted discourteously toward § 87(2)(b) | |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|------------|-----------------------------|
| § 87(4-b), § 87(2)(g) | [REDACTED] | [REDACTED] |
| § 87(4-b), § 87(2)(g) | [REDACTED] | [REDACTED] |
| § 87(4-b), § 87(2)(g) | [REDACTED] | [REDACTED] |

Case Summary

On February 15, 2018, § 87(2)(b) a reporting non-witness and civil attorney, filed this complaint via e-mail with the IAB Command Center on behalf of his clients § 87(2)(b) and § 87(2)(b) generating log number 18-06498. The CCRB received this case on February 26, 2018.

On February 7, 2018, at approximately 4:00 p.m., Sgt. Wilbert Rodriguez, PO Michael Heinz, and PO Jimmie Moore, of the PSA 8 Anti-Crime unit, allegedly questioned § 87(2)(b) at the intersection of Thieriot Avenue and Story Avenue, in the Bronx (**Allegation A: Abuse of Authority**, § 87(2)(g)). The officers allegedly stopped § 87(2)(b) and § 87(2)(b) (**Allegation B, C, D: Abuse of Authority**, § 87(2)(g)). Sgt. Rodriguez allegedly frisked and searched both § 87(2)(b) and § 87(2)(b) (**Allegations E, F, G, and H: Abuse of Authority**, § 87(2)(g)). An officer allegedly searched § 87(2)(b)'s vehicle (**Allegation I: Abuse of Authority**, § 87(2)(g)). PO Heinz allegedly smacked § 87(2)(b)'s phone out of his hand while he was recording, and stomped on his phone resulting in damage to the phone (**Allegation K: Abuse of Authority**, § 87(2)(g); **Allegation I: Discourtesy**, § 87(2)(g); **Allegation L: Abuse of Authority**, § 87(2)(g)). § 87(4-b), § 87(2)(g). No arrests or summonses resulted from this incident.

Video footage searches were conducted using both GoogleMaps and the body-worn camera (BWC) list. However, all searches for video footage yielded negative results. Therefore, no relevant video footage could be located.

Findings and Recommendations

Allegation A – Abuse of Authority: Sergeant Wilbert Rodriguez questioned § 87(2)(b) § 87(2)(b) alleged that he, § 87(2)(b) and § 87(2)(b) drove to the intersection of Thieriot Avenue and Story Avenue to pick up his brother § 87(2)(b) and voluntarily pulled over to wait for § 87(2)(b). § 87(2)(b) noted that he had a learner's permit and was not a licensed driver. An unmarked black van then pulled in behind § 87(2)(b)'s vehicle and PO Heinz, Sgt. Rodriguez, and PO Moore, all of whom § 87(2)(b) knew from prior interactions, exited the vehicle. Sgt. Rodriguez asked § 87(2)(b) "do you know the street speed limit?" § 87(2)(b) responded, "Yeah, I know the speed limit. Twenty-five." Sgt. Rodriguez replied, "Oh ok. But you know you got a permit, right buddy?" § 87(2)(b) responded, "Yes." Sgt. Rodriguez then asked, "Wait, whose car is this?" § 87(2)(b) acknowledged being the owner of the vehicle, and Sgt. Rodriguez then asked, "Okay. Does anyone in this car have a license?" § 87(2)(b) told Sgt. Rodriguez that he was waiting for § 87(2)(b) to come out because he was the licensed driver (Board Review 02). § 87(2)(b) alleged that he was in § 87(2)(b)'s vehicle with § 87(2)(b) who was driving, § 87(2)(b) and § 87(2)(b). § 87(2)(b) pulled over to drop § 87(2)(b) off, near the intersection of Story Avenue and Thieriot Avenue, and § 87(2)(b) exited the vehicle and began walking away. PO Heinz and Sgt. Rodriguez then pulled up behind § 87(2)(b)'s vehicle in an unmarked black SUV, which § 87(2)(b) noted was following § 87(2)(b) for two blocks, and interacted with § 87(2)(b) and § 87(2)(b) (Board Review 01).

§ 87(2)(b) in an unsworn phone statement, alleged that she was with § 87(2)(b) and § 87(2)(b) when they were pulled over by PO Moore and Sgt. Rodriguez.

§ 87(2)(b) was ultimately uncooperative with providing a sworn statement to the investigation (Board Review 03).

§ 87(2)(b) in an unsworn phone statement, alleged that he, § 87(2)(b) and § 87(2)(b) were driving when they were pulled over by the three officers. The officers knew § 87(2)(b) and § 87(2)(b) by name, so they did not ask for their identification. The officers did warrant checks on all four individuals, and then released them without further action. § 87(2)(b) was ultimately uncooperative with providing a sworn statement to the investigation (Board Review 04).

PO Heinz, Sgt. Rodriguez, and PO Moore were all interviewed by the CCRB, and while all three officers acknowledged numerous prior interactions with § 87(2)(b) and § 87(2)(b) they all denied interacting with § 87(2)(b) and § 87(2)(b) on the incident date. Additionally, all officers denied ever interacting with § 87(2)(b) and § 87(2)(b) near the intersection of Thieriot Avenue and Story Avenue. In a second interview with the CCRB, PO Heinz, upon being presented with results of the warrant audit of § 87(2)(b) and § 87(2)(b) testified that he did not recall why specifically he ran the individuals' information on the date of the incident, but noted that he has previously run their information upon seeing them on the street to ensure there are no outstanding warrants or concerns with their records, and that running their information was not indicative that an actual interaction took place. PO Heinz further denied that an incident took place on February 7, 2018 to his recollection (Board Reviews 05, 06, 07, and 25).

The memo books of PO Heinz, Sgt. Rodriguez, and PO Moore were obtained for February 7, 2018. However, none of the officers have any memo book entries related to this incident or any vehicle stop conducted around the alleged time of the incident. All three officers have entries indicating that they were conducting exterior patrol at the Monroe Houses from 3:00 p.m. to 4:10 p.m. (Board Reviews 08, 09, and 10). The incident location is approximately one block from the Monroe Houses.

The Event Summary from the 43rd Precinct for February 7, 2018 yielded negative results for an ICAD near Thieriot Avenue and Story Avenue at the alleged time of the incident. Also, a search for a Stop Report related to this incident yielded negative results (Board Reviews 11 and 12).

A warrant audit for § 87(2)(b) and § 87(2)(b) for the date of the incident yielded negative results. However, an audit for § 87(2)(b) and § 87(2)(b) indicated that PO Heinz ran their information via department-issued cell phone on February 7, 2018 at 3:59 p.m. and 4:06 p.m., respectively (Board Reviews 13, 24, and 26).

No holder of a learner's permit shall operate a motor vehicle with any front seat occupants other than the supervising licensed driver. New York State Vehicle and Traffic Law, Article 19, Section 501-b. An officer can approach a parked vehicle and request information if he has an articulable basis for requesting the information. People v. Harrison, 57 N.Y.2d 470 (1982). An officer may question an individual when he has founded suspicion that criminality is afoot. People v. DeBour, 40 N.Y.2d 210; 352 N.E. 2nd 562 (1976) (Board Reviews 27, 29, and 30).

§ 87(2)(g)

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Allegation B – Abuse of Authority: Sergeant Wilbert Rodriguez stopped § 87(2)(b)

Allegation C – Abuse of Authority: Sergeant Wilbert Rodriguez stopped § 87(2)(b)

Allegation D – Abuse of Authority: Sergeant Wilbert Rodriguez stopped § 87(2)(b)

Allegation E – Abuse of Authority: Sergeant Wilbert Rodriguez frisked § 87(2)(b)

Allegation F – Abuse of Authority: Sergeant Wilbert Rodriguez searched § 87(2)(b)

Allegation G – Abuse of Authority: Sergeant Wilbert Rodriguez frisked § 87(2)(b)

Allegation H – Abuse of Authority: Sergeant Wilbert Rodriguez searched § 87(2)(b)

Allegation I – Abuse of Authority: An officer searched the vehicle in which § 87(2)(b)

and § 87(2)(b) **were occupants.**

Allegation J – Abuse of Authority: Police Officer Michael Heinz interfered with § 87(2)(b)

s use of a recording device.

Allegation K – Discourtesy: Police Officer Michael Heinz acted discourteously toward

§ 87(2)(b)

Allegation L – Abuse of Authority: Police Officer Michael Heinz damaged § 87(2)(b) **s**
property.

§ 87(2)(b) alleged that PO Heinz and Sgt. Rodriguez approached § 87(2)(b)
and § 87(2)(b) and asked them to exit the vehicle. § 87(2)(b) took his phone
out and began recording the incident. PO Heinz approached § 87(2)(b) and stated, “What are
you doing?” § 87(2)(b) responded, “I’m recording.” PO Heinz replied, “Oh yeah?” PO Heinz
then smacked § 87(2)(b) s phone out of his hand and stomped on it four to six times, shattering

it into multiple pieces. § 87(2)(b) got “pissed off” and walked away without having any further conversation with PO Heinz. While walking away, § 87(2)(b) observed PO Heinz and Sgt. Rodriguez pat down § 87(2)(b) and § 87(2)(b) – though he could not specify who frisked who. § 87(2)(b) did not see either officer reach into any of the individuals’ pockets. Sgt. Rodriguez then entered § 87(2)(b)’s vehicle from the front passenger’s door and looked in the glove compartment and center console, and looked onto the floor of the rear passenger’s seat with his flashlight. § 87(2)(b) presented a photo of a damaged iPhone during his CCRB interview, which possessed multiple cracks and a discolored screen. However, neither § 87(2)(b) nor his attorney, § 87(2)(b) were cooperative in providing the photo to the CCRB (Board Review 01).

§ 87(2)(b) alleged that, during the interaction, § 87(2)(b) came walking down the block and approached the vehicle with his cell phone out. PO Heinz walked across the street, towards § 87(2)(b) took his open hand and smacked § 87(2)(b)’s phone out of his hand in a vertical motion from top to bottom. PO Heinz did not say anything prior to doing this, but told § 87(2)(b) afterwards, “Get the fuck away,” and, “Mind your fucking business.” PO Heinz then stomped on the phone, breaking it. § 87(2)(b) and § 87(2)(b) were then all asked to step out of the vehicle. Sgt. Rodriguez unzipped § 87(2)(b)’s hoodie, reached inside and patted his arms, waist area, and shook his jeans out. He then took § 87(2)(b)’s hat off his head and looked inside of it. Sgt. Rodriguez then entered both of § 87(2)(b)’s hoodie pockets, two front jeans pockets, and an additional pocket above the front right jeans pocket. Sgt. Rodriguez then frisked § 87(2)(b)’s arms and waistband, and entered the only hoodie pocket she had. He also entered her sweatpants pockets and pulled money, identification, and loose receipts out. PO Moore “searched” § 87(2)(b) but § 87(2)(b) was unable to specify PO Moore’s actions any further. § 87(2)(b) initially alleged that Sgt. Rodriguez searched his vehicle, but later alleged that it was PO Heinz who searched it, noting that PO Heinz entered the vehicle and searched the glove compartment, center console, under the steering wheel, and under the seats. PO Heinz then searched the backseat and pulled out the cup holder in the backseat. Afterward, PO Heinz opened the trunk and searched the trunk, dumping out three or four black garbage bags that § 87(2)(b) had inside containing clothes and toys for his children – though § 87(2)(b) acknowledged not personally observing PO Heinz empty the bags and only saw after the incident that the contents of the bags were emptied out. The civilians were then released without any issuance of summonses (Board Review 02).

§ 87(2)(b) in an unsworn phone statement, alleged that all four individuals were asked to step out of the vehicle. Sgt. Rodriguez patted § 87(2)(b) down on her pockets and legs, and entered her pockets and took her belongings out of her pockets. § 87(2)(b) and § 87(2)(b) were all searched in a similar fashion as well, and Sgt. Rodriguez then searched § 87(2)(b)’s vehicle. § 87(2)(b) was ultimately uncooperative with providing a sworn statement to the investigation (Board Review 03).

§ 87(2)(b) in an unsworn phone statement, denied that anyone was asked to step out of the vehicle, denied that any of the civilians were frisked or searched, and denied that § 87(2)(b)’s vehicle was searched. § 87(2)(b) stated that there was “no issue” between officers and § 87(2)(b)’s attempt to record the incident, but was unsure whether an officer damaged § 87(2)(b)’s phone in any way. § 87(2)(b) was ultimately uncooperative with providing a sworn statement to the investigation (Board Review 04).

PO Heinz, Sgt. Rodriguez, and PO Moore, as previously stated, all denied interacting with § 87(2)(b) and § 87(2)(b) on the incident date (Board Reviews 05, 06, 07, and 25).

An officer may stop an individual when he has reasonable suspicion that the individual has committed, is committing, or is about to commit a crime. People v. DeBour, 40 N.Y.2d 210; 352 N.E. 2nd 562 (1976). A person is considered stopped if their liberty of movement is significantly interrupted by the officer's actions. Id (Board Review 29).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This case was not suitable for mediation.
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- According to OCA, § 87(2)(b) has no history of convictions in New York City (Board Review 17).
- § 87(2)(b) and § 87(2)(b) filed a Notice of Claim with the City of New York claiming illegal searches, property damage, and physical and psychological trauma, and is seeking an unspecified amount as redress. As of October 1, 2018, no 50H hearing has been scheduled (Board Reviews 18 and 19).

Civilian and Subject Officer CCRB Histories

- § 87(2)(b)
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- § 87(2)(b)
- [REDACTED]

- § 87(2)(b) [REDACTED]
- [REDACTED]
- § 87(2)(b) [REDACTED]
- [REDACTED]
- § 87(2)(b) [REDACTED]
- [REDACTED]
- PO Heinz has been a member-of-service for five years and has been a subject in nine CCRB complaints and 29 allegations, of which one was substantiated:
 - CCRB 201709949 involved a substantiated allegation of physical force against PO Heinz. The Board recommended charges, and as of the writing of this report, the NYPD has not yet imposed discipline.
 - § 87(2)(g) [REDACTED]
- Sgt. Rodriguez has been a member-of-service for 21 years and has been a subject in six CCRB complaints and 19 allegations, none of which have been substantiated. [REDACTED]
- § 87(2)(g) [REDACTED]
- PO Moore has been a member-of-service for 18 years and has been a subject in 11 CCRB complaints and 27 allegations, four of which were substantiated:
 - CCRB case 201407548 involved a substantiated allegation of interfering with a recording device against PO Moore. The Board recommended formalized training, and the NYPD imposed a penalty of formalized training.
 - CCRB case 201602039 involved substantiated allegations of use of pepper spray and discourtesy against PO Moore. The Board recommended Command Discipline “A”, and the NYPD imposed a penalty of Command Discipline “B.”
 - CCRB case 201709949 involved a substantiated allegation of use of pepper spray against PO Moore. The Board recommended charges, and as of the writing of this report, the NYPD has not yet imposed discipline.

Squad No.: 12

Investigator: _____

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| Signature | Print Title & Name | Date |
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Squad Leader: _____

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| Signature | Print Title & Name | Date |
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Reviewer: _____
Signature Print Title & Name Date